

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

XAVIER MACK,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NUMBER:
) 2:13-cv-02263-HGD
) JURY DEMAND
)
COLORWORKS PAINTING)
COMPANY, LLC and)
ERIC BIRCHFIELD,)
)
Defendants.)

AMENDED COMPLAINT

I. JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. §1981.

The jurisdiction of this Court is invoked to secure protection of and redress deprivation of rights secured by 42 U.S.C. §1981 providing for injunctive and other relief against race discrimination in employment.

2. The plaintiff is filing his race discrimination lawsuit within four years of his discriminatory termination on December 3, 2013.

II. PARTIES

3. Plaintiff, Xavier Mack, is a male African-American citizen of the United

States and a resident of the State of Alabama. The plaintiff was employed by the defendants in Birmingham, Jefferson County, Alabama prior to his discriminatory discharge.

4. Defendant, Colorworks Painting Company, LLC (Colorworks and/or defendant), is an entity subject to suit under 42 U.S.C. §1981.

5. Defendant, Eric Birchfield, is the Owner of Colorworks and an entity subject to suit under 42 U.S.C. §1981.

III. FACTUAL ALLEGATIONS

6. The plaintiff re-alleges and incorporates by reference paragraphs 1-5 with the same force and effect as if fully set out in specific detail hereinbelow.

7. The plaintiff has been discriminated against in termination, layoff and other adverse terms and conditions of employment because of his race.

8. The plaintiff had been employed with the defendants from February 2010 until his termination/layoff. At the time of his termination/layoff, the plaintiff was a painter.

9. At the time, the plaintiff was terminated/laid off, the defendants retained a white male, who had only been employed for approximately three (3) weeks. Plaintiff had been employed for approximately 2 years and 9 months at the time of his termination/layoff.

10. The plaintiff was terminated/laid off by the Owner and his supervisor, Eric Birchfield.

11. During the plaintiff's employment, he performed his duties and responsibilities in a satisfactory manner and had not been written up and/or counseled for poor work performance.

12. The defendants' proffered reasons for termination were pretext for race discrimination.

13. The plaintiff seeks to redress the wrongs alleged herein and this suit for back-pay plus interest, an injunctive and declaratory judgment is his only means of securing adequate relief. The plaintiff is now suffering and will continue to suffer irreparable injury from the defendants' unlawful policies and practices as set forth herein unless enjoined by this Court.

IV. PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully prays that this Court assume jurisdiction of this action and after trial:

1. Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of the defendants are violative of the rights of the plaintiff as secured by 42 U.S.C. §1981.

2. Grant plaintiff a permanent injunction enjoining the defendants, its

agents, successors, employees, attorneys and those acting in concert with the defendants and at the defendants' request from continuing to violate 42 U.S.C. §1981.

3. Enter an order requiring the defendants to make the plaintiff whole by awarding him the position he would have had occupied in the absence of race discrimination, back-pay (plus interest), front-pay, punitive and compensatory damages and/or nominal damages, declaratory and injunctive relief, and benefits.

4. The plaintiff further prays for such other relief and benefits as the cause of justice may require, including but not limited to, an award of costs, attorney's fees and expenses.

Respectfully submitted,

/s/Gregory O. Wiggins
Gregory O. Wiggins
Kevin W. Jent
Counsel for the Plaintiff

OF COUNSEL:

WIGGINS, CHILDS, QUINN & PANTAZIS, LLC
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PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY

/s/Gregory O. Wiggins
Gregory O. Wiggins
Kevin W. Jent

CERTIFICATE OF SERVICE

I do hereby certify that I have filed today, February 19, 2014, the above and foregoing by using the Court's CM-ECF system, with copies being served on:

Scott A. Gilliland
Law Office of Scott A. Gilliland
400 Vestavia Parkway, Suite 241
Birmingham, Alabama 35216

/s/Gregory O. Wiggins
OF COUNSEL